

Exhibit A  
Declaration of Philip Eitzman

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA

Case No.

vs.

**DECLARATION OF  
PHILIP EITZMAN**

CORE-X SYSTEM LLC

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I, Philip Eitzman, of Washington County, State of Minnesota, United States of America, declare as follows:

1. I am a Product Development Engineer at 3M Company (hereinafter “3M”), where I work on Personal Protective Equipment (“PPE”) products such as respirators (masks).

2. This declaration is based on my personal knowledge, my review of photographs and other records submitted to the 3M Fraud Hotline, and my review of other records kept by 3M in the ordinary course of its business. I am over 18 years, and mentally competent to make this affidavit.

3. I have worked at 3M since November 1991. In my current role, I design and develop 3M’s N95 respirators, among other things. I also have extensive training and experience identifying counterfeit 3M-brand N95 respirators and differentiating them from authentic 3M products.

4. Because of my knowledge of and experience with 3M respirators, I am from time to time involved in 3M’s responses to reports from the 3M Fraud Hotline, which 3M established to help end-users and purchasers of 3M products identify authentic 3M respirators and ensure products are from 3M authorized distributors.

To this end, potential purchasers frequently contact the Fraud Hotline to ask whether 3M product can be authenticated.

5. Counterfeit products are determined to mean any products that did not originate from a 3M manufactured facility.

6. In May 2021, 3M received photographs of the products and packaging delivered by Core X System, LLC to the State of Arizona (provided to 3M by Rachel Oehlerking) and determined that the product is counterfeit.

7. Specifically, the printing on the respirators does not conform to the known characteristics of printing present on authentic 3M 1860 and 1860S respirators; and the construction of the products examined does not conform to the known characteristics of authentic 3M 1860 and 1860S respirators. Representative photographs of the respirators and packaging that we examined are included as **Exhibit 1** to this Declaration.

8. Attached as **Exhibit 2** is a true and correct copy of the written testimony of Kevin Rhodes presented to the Senate Subcommittee on Consumer Protection, Product Safety, and Data Security on April 27, 2021, in which Mr. Rhodes testifies that:

Genuine 3M N95 respirators contain advanced filter material and are designed to be tight fitting, forming a seal with the wearer's face, so inhaled air passes through the filter (instead of going around the edges). 3M N95 respirators contain proprietary, advanced electrostatic microfiber media to capture particles. 3M's unique manufacturing process injects an electrostatic charge into the microfibers, which are arranged in an open formation, allowing for easier passage of air while also enhancing the capture of airborne particles. 3M N95 respirators are also designed to seal to the wearer's face—as fit and seal are critical to respirator performance. 3M N95 respirators are tested on an ongoing basis to ensure they meet filtration efficiency requirements and other performance criteria specified in applicable government regulations. 3M has strict quality controls and manufacturing standards to help ensure the consistent high performance and consistent fit of our products.

9. I make this declaration in good faith and for no improper purpose.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 11/15/2021

  
Philip Eitzman

# EXHIBIT 1

1860 Lot R20265





1860S Lot R20641



# **EXHIBIT 2**



**Exhibit 2**

Statement of Kevin H. Rhodes,

Senior Vice President and  
Deputy General Counsel  
of 3M Company,

To the

Subcommittee on Consumer Protection, Product  
Safety, and Data Security

Of the

Committee on Commerce, Science, and  
Transportation of the United States Senate

On

**“Curbing COVID Cons: Warning Consumers  
about Pandemic Frauds, Scams, and Swindles”**

April 27, 2021

**Statement of Kevin H. Rhodes**

**Senior Vice President and Deputy General Counsel  
3M Company**

Chair Blumenthal, Ranking Member Blackburn, and Distinguished Members of the Subcommittee on Consumer Protection, Product Safety, and Data Security of the Senate Committee on Commerce, Science, and Transportation, thank you for the opportunity to appear before you today.

Chair Blumenthal, I would especially like to thank you for organizing this critically important hearing and for your tireless championing of consumer protection. Senator Blackburn and Subcommittee Members, your partnership and collaboration with 3M during this pandemic is greatly appreciated, and I thank each of you as well.

3M is grateful for the opportunity to testify on the subject of “Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles.” By way of introduction, my name is Kevin Rhodes, and I am a Senior Vice President and the Deputy General Counsel of 3M Company, based in St. Paul, Minnesota. In this role, I am proud to be a leader of 3M’s ongoing efforts during the COVID-19 pandemic to address fraud, counterfeiting, and price gouging of personal protective equipment, most notably respiratory protection products. Our efforts are designed to help the heroic healthcare workers and first responders, who put their lives on the line for others every day, get the genuine 3M N95 respirators<sup>1</sup> they need and deserve at a fair price.

**About 3M**

Since its founding in 1902 in northern Minnesota as a small-scale mining venture, 3M has grown into a global, diversified technology company based on science applied to life and bringing innovative new products to the market. 3M’s vision is to create technologies and products that advance every company, enhance every home, and improve every life; and

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<sup>1</sup> “N95 respirators” are filtering facepiece respirators approved by the United States National Institute for Occupational Safety and Health (NIOSH) as capable of filtering at least 95% of non-oily particles from the air breathed through the respirator when properly selected and worn. See 42 C.F.R. Part 84 – Approval of Respiratory Protective Devices.

today, some 95,000 3Mers work together to create more than 60,000 3M products that are used in homes, businesses, schools, hospitals, and other industries around the globe.

Since long before the COVID-19 pandemic, 3M has been a leading provider of personal protective equipment (PPE) and medical solutions for medical professionals, workers, and the public. Besides the disposable N95 respirators that are among 3M's most widely-known personal protective equipment products, 3M is also a leading manufacturer and supplier of powered-air purifying respirators, elastomeric reusable respirators, and self-contained breathing apparatuses. In addition, 3M provides other critical products in support of the world's pandemic response, including hand sanitizer, single patient use stethoscopes, disinfectants, separation and purification media used in vaccine manufacturing, oxygenator membranes, and disinfecting wipes.

#### **3M's response to the COVID-19 pandemic**

From the outset of the COVID-19 pandemic, 3M has recognized and embraced its responsibility to lead in supporting the public health response. In March of 2020, Mike Roman, 3M's Chairman of the Board and Chief Executive Officer, made clear that 3M's most urgent priority is protecting the health and safety of its employees and others:

3M has a unique and critical responsibility in pandemic preparedness and response – a responsibility I and all our people take very seriously. Our most urgent priority is the safety of our employees, healthcare workers and the public.<sup>2</sup>

3M has taken these words to heart. 3Mers across the globe have helped fulfill 3M's unique and critical responsibility by responding to the pandemic from all angles. We have ramped up our United States and global manufacturing of disposable respirators and are making nearly four times as many 3M N95 respirators than before the pandemic. We are helping to ensure those products are getting to where they are needed most by frontline workers, partnering not only with our authorized distributors, but also directly with federal and state partners, including the Strategic National Stockpile, the Department of Health and Human

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<sup>2</sup> "3M CEO on COVID-19 response: We have a unique and critical responsibility," available at <https://news.3m.com/English/3m-stories/3m-details/2020/3M-CEO-on-COVID-19-response-We-have-a-unique-and-critical-responsibility/default.aspx>.

Services, and the Federal Emergency Management Agency. In addition, we are aggressively targeting fraud, counterfeiting, and price gouging by bad actors seeking to take advantage of the tremendous demand for our products during the pandemic.<sup>3</sup>

Beginning in January of 2020, as we began to see the challenges that were coming, 3M began surging its production of N95 and other respiratory products to unprecedented levels. We ramped up production to full capacity at our factories making respirators in the United States and around the world – doubling production within two months. By the end of the year, we had manufactured two billion disposable respirators globally – more than three times the number we produced in 2019. 3M also increased our supply of reusable respirators and powered air-purifying respirators, which are often suitable alternatives to disposable N95 or similar respirators.

In the United States, 3M quickly moved to full-capacity production of N95 respirators, bringing surge manufacturing capacity on line for 24/7 production at our facilities in Aberdeen, South Dakota; and Valley, Nebraska.<sup>4</sup> 3M also invested in capital and resources to increase its United States N95 respirator production, and partnered with the Department of Defense, via contracts awarded under the authority of the Defense Production Act (DPA), to increase 3M's N95 respirator manufacturing capacity in the United States. This increase in 3M's United States production includes a 120,000-square-foot expansion at 3M's manufacturing facility in Aberdeen, South Dakota, where 3M has added hundreds of new jobs since the pandemic began. In the United States alone, 3M is now manufacturing more than 95 million N95 respirators a month – up from 22 million a month prior to the pandemic.

With the global demand for N95 respirators and other PPE products exceeding the supply available from 3M and other manufacturers since early in 2020, wrongdoers have sought to exploit the public health emergency and prey on innocent parties through a variety of unlawful scams, including fraudulent offers of N95 respirators and other products in high demand, counterfeiting, price gouging, and other unfair and deceptive practices—all of

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<sup>3</sup> For more on these and many more 3M actions to lead in the pandemic response, see "A year of helping fight COVID-19," available at <https://news.3m.com/English/3m-stories/3m-details/2021/-A-year-of-helping-fight-COVID-19/default.aspx>.

<sup>4</sup> See "How 3M Plans to Make More than a Billion Masks By End of Year," available at <https://www.bloomberg.com/news/features/2020-03-25/3m-doubled-production-of-n95-face-masks-to-fight-coronavirus>.



which undercut the integrity of the marketplace and constitute an ongoing threat to public health and safety. As explained in more detail below, 3M has launched a global effort to help protect the public against these pandemic profiteers and their unlawful activities. We have created and made available many resources to help purchasers of respirators and the public avoid these unlawful schemes. 3M has established and staffed new hotlines and web intake forms in the United States and around the world to help purchasers and end-users of 3M products identify authentic 3M respirators and ensure products are from 3M authorized distributors. 3M has published on our website the United States list prices for many of the most common models of 3M N95 respirators to help customers identify and avoid inflated prices. We have also filed lawsuits in courts across the country against wrongdoers, terminated 3M distributors for engaging in price gouging or violating 3M policy, and collaborated with technology companies to combat online fraud and deceptive trade practices. Our partnerships with law enforcement and customs agencies around the world, including the United States Department of Homeland Security (DHS) and United States Customs and Border Protection (CBP), have resulted in raids and seizures that have removed tens of millions of counterfeit respirators from the market before they could reach unsuspecting users.

**Pandemic profiteers: fraud, counterfeiting, and price gouging**

It was not long after the COVID-19 pandemic began that 3M started to receive reports of suspected fraud, counterfeiting, and price gouging connected with our products. 3M moved quickly to form and deploy a dedicated team, including in-house and outside attorneys, government affairs staff, and employees from across the company, working alongside federal, state, and international law enforcement authorities and government officials, to help investigate and take action against those involved in these unlawful and unethical activities.

From the outset, many of the reports we investigated involved fraudulent schemes offering to sell nonexistent quantities of 3M N95 respirators to unsuspecting buyers, including local, state or provincial, and federal or national governments. Examples include fraudsters claiming to have access to enormous quantities of 3M products – sometimes billions or even trillions of respirators, representing hundreds or thousands of years of 3M’s entire production capacity – when in fact they had no business relationship with 3M and no access to 3M products. These scammers have taken many approaches to try to convince would-be buyers that they have genuine 3M N95 respirators to sell. They have impersonated 3M employees, claimed to have the ability to place orders directly with 3M factories, and

represented that they are directly affiliated with 3M as one of our authorized channel partners. Often these fraudsters create fake invoices, purchase orders, letters, or emails purporting to be from 3M or its executives, or other forged documents to support their claims of access to 3M and its products.

The targets of these scams are not only private purchasers, but also government procurement officials charged with using public funds to secure PPE supplies for public sector frontline workers. These buyers often have longstanding relationships with 3M authorized distributors and 3M has emphasized that these existing supply chains are the safest way to secure genuine 3M products. 3M has explained that offers of enormous quantities of what are claimed to be 3M respirators from new sellers that no one has ever heard of before, or new companies that were only formed after the pandemic started, or that have no experience in PPE supply, sound too good to be true because they are not true.

The goal of these schemes is to secure payment in advance, before the buyer realizes the product does not exist. Thus, the payment terms usually include up-front deposits, payments into escrow accounts that the purported seller may access, and other schemes designed to allow the fraudster to secure funds in advance and then disappear once the money is received. In addition to 3M's hotlines offering support to verify whether offers are from legitimate sellers, 3M also has published a list of common schemes that do not match 3M's business practices to help buyers identify and avoid fraudulent offers.<sup>5</sup>

Typically, these schemes also involve price gouging, with the selling prices of the purported 3M N95 respirators often being many multiples of the prices for authentic 3M respirators from 3M's authorized distributors. These price gougers often target government procurement officials charged with using precious public funds to secure PPE supplies for public sector healthcare workers and first responders. To help buyers identify and avoid inflated prices, early in the pandemic 3M took the important step of publishing its single-case list prices for the most common 3M N95 respirator models sold in the United States.<sup>6</sup>

As the pandemic progressed, reports of counterfeit respirators increased. Both the number of counterfeiter manufacturers and the quantities of counterfeit products they were offering

<sup>5</sup> See <https://multimedia.3m.com/mws/media/1860221O/covid-n95-selling-facts.pdf>.

<sup>6</sup> See <https://multimedia.3m.com/mws/media/1862179O/get-the-facts-n95-respirator-pricing.pdf>.

for sale steadily increased as the demand for N95 respirators continued to exceed supply and counterfeiters set up manufacturing operations to capitalize on the opportunity to make and sell fake products. The counterfeit products are often manufactured at scale and for cross-border sales, making it difficult to track the source of products being offered for sale to end-users in the United States or elsewhere. Although some of the counterfeit products may be identified by mistakes in packaging, missing straps, strange odors, blocked valves, and other readily-apparent defects, counterfeiters have become increasingly sophisticated since the pandemic began, making their fake respirators more difficult to distinguish from authentic 3M products. 3M has responded by emphasizing that the best way to avoid counterfeit products is to purchase 3M N95 respirators only from 3M authorized distributors, by posting tips on how to spot counterfeit products on our website, and by publishing counterfeit alerts as we become aware of specific information that will assist buyers and users in identifying and avoiding counterfeits, such as lists of commonly counterfeited product models, product lot codes used by counterfeiters, fake product seals, and other ways to spot counterfeit products.<sup>7</sup>

#### **The dangers of counterfeit respirators**

3M has received questions about the performance of counterfeit respirators. The answer is that the performance of these fake products is unknown, may be highly variable, and cannot be trusted. There is a real danger that they will not provide the level of protection wearers expect from genuine 3M N95 respirators. These counterfeit products have not been NIOSH approved. They are not tested to see if they meet the N95 standard. The people who are making these fakes are not interested in testing them to see if they work. They are not interested in making high quality products. They are interested in nothing more than fraudulent profiteering by making as many as they can as cheaply as possible and passing them off as NIOSH approved, genuine 3M respirators.

Genuine 3M N95 respirators contain advanced filter material and are designed to be tight fitting, forming a seal with the wearer's face, so inhaled air passes through the filter (instead of going around the edges). 3M N95 respirators contain proprietary, advanced electrostatic microfiber media to capture particles. 3M's unique manufacturing process injects an

<sup>7</sup> See <https://multimedia.3m.com/mws/media/1934748O/3m-counterfeit-communication-letter.pdf>; <https://multimedia.3m.com/mws/media/1960842O/3m-8210-counterfeit-communication-letter.pdf>; <https://multimedia.3m.com/mws/media/1861617O/avoiding-counterfeit-respirators.pdf>.



electrostatic charge into the microfibers, which are arranged in an open formation, allowing for easier passage of air while also enhancing the capture of airborne particles. 3M N95 respirators are also designed to seal to the wearer's face – as fit and seal are critical to respirator performance. 3M N95 respirators are tested on an ongoing basis to ensure they meet filtration efficiency requirements and other performance criteria specified in applicable government regulations. 3M has strict quality controls and manufacturing standards to help ensure the consistent high performance and consistent fit of our products.

Counterfeit respirators, on the other hand, are not designed, tested, or approved to ensure they perform as advertised. Counterfeit respirators are made by unknown fraudsters, using unknown processes and materials, with unknown or nonexistent quality controls. They do not come from 3M's supply chain and are not manufactured using 3M's proprietary advanced materials or robust quality controls. There is no telling how an individual counterfeit respirator will perform because counterfeiters have little or no interest in quality control and thus there may be tremendous product-to-product variability in fit, filtering ability, and performance. Counterfeit products never should be trusted to provide respiratory protection for anyone who needs it, let alone frontline workers in the fight against the pandemic.

As the Honorable Alejandro N. Mayorkas, Secretary, United States Department of Homeland Security, said about counterfeit respirators during a press conference announcing the seizure of more than eleven million counterfeits on February 18, 2021, "Not only do they give a false sense of security, but how dangerous is the exposed individual? How dangerous is the individual confronting a potential COVID-19 infection without any protective gear?"<sup>8</sup>

Counterfeiters are criminals. They have no qualms putting fake NIOSH N95 certifications on their products. They have no qualms trying to pass their products off as genuine using fake 3M logos and fake packaging. They have no qualms deceiving frontline workers counting on genuine 3M N95 respirators and do not care whether their products provide those frontline workers with protection or not. That is why 3M has been so active in communicating the dangers of counterfeit respirators. 3M has stressed that avoiding counterfeits starts by knowing who is selling what are claimed to be genuine 3M N95 respirators – in other words, is it really a 3M authorized distributor with access to genuine

<sup>8</sup> "Feds seize more than 11 million fake N95 masks," available at <https://www.msn.com/en-us/news/us/feds-seize-more-than-11-million-fake-n95-masks/ar-BB1dMdsF?li=BBnb7Kz>.

3M products? 3M has communicated widely that it stands ready to help answer that most important question. For anyone who has any questions about whether respirators that have been purchased or that are being offered for sale are authentic, 3M has the resources available to assist in authenticating the product, via our anti-fraud hotlines or our [3m.com/covidfraud](https://www.3m.com/covidfraud) website.

**3M's global response against respirator fraud, counterfeiting, and price gouging**

In March of 2020, 3M launched its global effort against respirator fraud, counterfeiting, and price gouging. 3M did so to help protect healthcare workers, first responders, and others on the front lines of the fight against the COVID-19 pandemic from counterfeit and inferior PPE products, to help reduce the money and time wasted by government and other procurement personnel on fraud and scams, to address exorbitant pricing by those seeking to take advantage of a public health crisis for personal gain, and to make sure that 3M's good name and reputation are not associated with fraudsters, counterfeiters, or other unscrupulous pandemic profiteers.

Our legal and government affairs functions have joined with hundreds of 3M employees across the company and around the world, as well as more than 30 law firms representing 3M, to protect public health and the PPE supply chains supporting healthcare workers and others responding to the pandemic. We track our progress and the success of our efforts, regularly publishing updates on our website so the public can stay informed and engaged in helping to identify unlawful activities, and to deter bad actors by communicating 3M's sustained and substantial commitment to finding and stopping their misconduct.

The latest update summary from our [3m.com/covidfraud](https://www.3m.com/covidfraud) website, showing the results of our efforts to date, is reproduced on the following page:<sup>9</sup>

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<sup>9</sup> See <https://multimedia.3m.com/mws/media/1862180O/3m-covid-19-infographic-print-version.pdf>.





As the infographic indicates, 3M's efforts start with creating opportunities for the public to report suspected cases of fraud, counterfeiting, and price gouging. We have created and staffed public hotlines in the United States and elsewhere around the world to help callers identify authentic 3M products, ensure products are from 3M authorized distributors, and report cases of suspected wrongdoing. Our website also includes intake forms so the public can report cases of suspected fraud, counterfeiting, and price gouging. Since the beginning of the pandemic, we have processed more than 13,800 reports of suspected fraud, counterfeiting, and price gouging from our hotlines and web intake forms. Similarly, we have established points of contact for government procurement officials to validate third-party offers and quotes, and have worked with federal, state, and local procurement officials across the country to help determine the validity of PPE offers and proposals.

3M investigates and takes action on these reports in a number of ways. Many are referred to law enforcement or other authorities for investigation and enforcement. We have referred thousands of cases to federal and state law enforcement, with many leading to criminal or civil enforcement actions. 3M has partnered closely with the United States Department of Justice COVID-19 Hoarding and Price Gouging Task Force (the DOJ Taskforce), a combined effort involving attorneys from Main Justice and participants from U.S. Attorney's offices in every federal district. We have reached out to state attorneys general offices as well to brief them on our efforts and to establish working relationships for information sharing and case referrals.

The investigatory and enforcement powers of law enforcement have greatly enhanced the ability to take effective action based on reports 3M receives of suspected illegal activities. Price gouging, for example, can be addressed effectively via our close partnerships with the DOJ Taskforce and state attorneys general. 3M has referred numerous reports of suspected price gouging to the DOJ Taskforce and state attorneys general for investigation and potential enforcement.<sup>10</sup>

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<sup>10</sup> See, e.g., "New Jersey Man Arrested For \$45 Million Scheme To Defraud And Price Gouge New York City During COVID-19 Pandemic," available at <https://www.justice.gov/usao-sdny/pr/new-jersey-man-arrested-45-million-scheme-defraud-and-price-gouge-new-york-city-during>; "Santa Monica Woman Admits Price Gouging in Sale of Scarce N95 Masks She Sold at Huge Markups over List Price During Pandemic," available at <https://www.justice.gov/usao-cdca/pr/santa-monica-woman-admits-price-gouging-sale-scarce-n95-masks-she-sold-huge-markups>.

3M also has filed legal actions directly against wrongdoers. 3M has filed 33 lawsuits in federal courts across the United States and in Canada against defendants engaged in fraud, counterfeiting and price gouging.<sup>11</sup> 3M has won 18 temporary restraining orders and 11 preliminary injunctions from federal judges across the country putting a stop to defendants' unlawful conduct. In 20 of the cases, 3M has reached settlements where the defendants agreed to cease their unlawful activities immediately and permanently, subject to strict verification and disgorgement of ill-gotten profits. In 17 of the cases, 3M has recovered monetary damages through court orders or agreements by the defendants, and 3M is donating all of those recoveries to COVID-19 relief charities.

As an example, it was on April 10, 2020, at the height of the pandemic in New York, that 3M filed its first federal lawsuit, in the United States District Court for the Southern District of New York against Performance Supply, LLC, a company targeting public officials in a fraud and price gouging scheme. Performance Supply offered to sell a Purchasing Agent at the New York City Office of Citywide Procurement seven million nonexistent 3M N95 respirators for \$45 million, representing a markup 500% higher than 3M list prices. Thankfully, New York City officials contacted 3M and we let them know the offer was fake. 3M sued and won a temporary restraining order and a preliminary injunction, putting a prompt end to the scam.<sup>12</sup> We also shared the information we had discovered with law enforcement authorities, who brought criminal charges of conspiring to commit wire fraud, wire fraud, and conspiring to violate the DPA against Ronald Romano, the owner of Performance Supply.<sup>13</sup>

An important element of 3M's enforcement efforts is addressing false or deceptive online business practices. 3M has partnered with some of the largest e-commerce and technology companies in the world to secure the removal of tens of thousands of e-commerce listings with fraudulent or counterfeit product offerings, false or deceptive social media posts, and deceptive internet addresses seeking to scam unsuspecting buyers.

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<sup>11</sup> A list of legal citations to these lawsuits is attached as Appendix A.

<sup>12</sup> See *3M Co. v. Performance Supply, LLC*, 458 F. Supp. 3d 181 (S.D.N.Y. 2020).

<sup>13</sup> See "A Car Salesman, a Macedonian Ex-Minister and a \$45 Million Mask Scheme," available at <https://www.nytimes.com/2020/05/26/nyregion/coronavirus-fraud-masks-new-york.html>.

A case that illustrates how 3M has collaborated with online retailers to stop scams is *3M Co. v. KM Bros Inc., et al.*, No. 2:20-cv-05049 MWF (JCx) (C.D. Cal. 2020). This case involved sellers on Amazon of fake, defective, and damaged respirators under the 3M name and logo, at prices more than 20 times 3M list prices. When buyers complained that they had received far fewer items than ordered, that the items appeared not to be 3M products, and that the products were damaged and in plastic bags rather than regular packaging, Amazon blocked the sellers' accounts and 3M filed suit.<sup>14</sup> A settlement including a Consent Judgment and Permanent Injunction put an end to the scam and disgorged the Defendants' profits in the amount of \$192,000, which 3M donated to Direct Relief's COVID-19 Fund for Community Health.<sup>15</sup>

3M's partnerships with law enforcement and customs authorities around the world have been particularly important in addressing the problem of counterfeit respirators. This collaboration has helped prevent tens of millions of counterfeit respirators from reaching frontline workers in the United States and elsewhere. In the United States, 3M actively shares information and case referrals involving counterfeiting with DHS, through Homeland Security Investigations (HSI) and the National Intellectual Property Rights Center (IPR Center), and with CBP. An example of this close collaboration is a recent investigation that HSI and the IPR Center launched after 3M contacted them and shared information that had come in through our fraud reporting process. 3M was contacted by a healthcare organization that had read a counterfeit alert 3M posted on its website and realized that the respirators it had purchased for its doctors and nurses had lot codes 3M identified as being used by counterfeiters. The HSI/IPR Center investigation identified the source of the counterfeit products and culminated in the announcement, on February 17, 2021, that HSI special agents had executed multiple criminal search warrants and had seized 11 million counterfeit masks in operations conducted in five states.<sup>16</sup> That matter is hardly unique: since the beginning of the pandemic, raids by law enforcement and seizures

<sup>14</sup> See *3M Co. v. KM Bros. Inc., et al.*, No. 2:20-cv-05049 MWF (JCx), 2020 WL 8676137 (C.D. Cal. 2020).

<sup>15</sup> See "3M Settles N95 Price-Gouging Claims with Amazon Seller," available at <https://news.bloomberglaw.com/ip-law/3m-settles-n95-price-gouging-claims-with-amazon-seller>.

<sup>16</sup> See "DHS prevents millions of counterfeit N95 masks from reaching hospital workers, first responders," available at <https://www.ice.gov/news/releases/dhs-prevents-millions-counterfeit-n95-masks-reaching-hospital-workers-first>.



by customs authorities around the world have removed more than 38 million counterfeit respirators from the market before they could endanger unsuspecting wearers.

As 3M's N95 respirator manufacturing capacity in the United States and elsewhere has increased, the gap between supply and demand has narrowed, and with that narrowing we have seen a gradual decrease in the number of reports we have received of unethical and unlawful business practices related to 3M N95 respirators. The volume of reports also has decreased as 3M has widely publicized its anti-fraud and anti-counterfeiting efforts, both to alert potential targets as to the nature and risks of these schemes so they can avoid becoming victims, and to deter would-be fraudsters by making clear 3M's resolve to find and stop their unlawful behavior.<sup>17</sup> Even with this decrease in the volume of reports to our hotlines and website, 3M's commitment to helping prevent fraud, counterfeiting, and price gouging before it starts and to stop it where it is occurring remains unwavering, and 3M will continue these efforts for as long as they are needed to support those serving so bravely on the front lines of the COVID-19 response.

#### **Lessons learned and suggestions for consideration**

In January 2021, 3M published a white paper, entitled "*Preparing Nations and Protecting Lives: Pandemic Preparedness for Citizens and Economies*,"<sup>18</sup> setting forth a series of policy recommendations to strengthen pandemic preparedness and response. The white paper explains how policymakers can help proactively combat fraud and counterfeit PPE activity by taking steps to avert PPE demand spikes. The recommendations include establishing robust stockpile programs, supporting resilient PPE supply chains, and minimizing trade restrictions to promote global access to an array of PPE products.

In addition, 3M has learned a number of lessons from its experience addressing fraud, counterfeiting and price gouging during the COVID-19 pandemic, and respectfully offers the following insights for consideration by policymakers:

- Even with more robust and secure domestic PPE supply chains, as well as government stockpiles, in a future pandemic the PPE marketplace may struggle to

<sup>17</sup> A list of internet links to press coverage of 3M's efforts to address fraud, counterfeiting, and price gouging is attached as Appendix B.

<sup>18</sup> [https://www.3m.com/3M/en\\_US/worker-health-safety-us/epidemic-preparedness-and-stockpiling/](https://www.3m.com/3M/en_US/worker-health-safety-us/epidemic-preparedness-and-stockpiling/).



keep up with dramatic spikes in demand, and this will create an opportunity for unscrupulous actors seeking to take advantage of a public health crisis for personal gain. Thus, pandemic preparedness planning should include specific plans and dedicated resources for federal, state, and local governments to respond quickly against fraud, counterfeiting, and price gouging. The DOJ Task Force is an example of rapid and effective mobilization of federal resources against these unlawful activities. Federal agencies, such as the Federal Trade Commission (FTC), also can play an important role by enforcing existing laws and regulations against fraud, counterfeiting, and price gouging, seeking all available relief to stop and deter these bad actors.

- Close public-private coordination among law enforcement, government agencies, and suppliers of PPE that is subject to fraud, counterfeiting, and price gouging, can be particularly effective in stopping unlawful actors. As I have described, 3M's partnership with federal and state law enforcement and agencies has greatly enhanced the ability to take effective action based on reports 3M receives of suspected illegal activities. Such partnerships that have been effective during the COVID-19 pandemic can serve as a model for securing PPE pandemic response supply chains in the future.
- With respect to counterfeit PPE, much of the counterfeiting appears to be perpetrated by manufacturers producing counterfeit products at scale for export. Once such products enter the United States supply chain, they can be difficult to identify, track, and remove from the marketplace before they get into the hands of healthcare workers and other end users. The most effective way to stop such counterfeits is before they enter the domestic supply chain. The cross-border trade in counterfeit PPE requires multilateral solutions supported with American leadership.
- Public education is important so that potential targets of scams – not only private purchasers, but also government procurement officials charged with using public funds to secure PPE supplies for public sector frontline workers – can identify and avoid being victimized by fraud, counterfeiting, or price gouging. Government agencies, such as the FTC, can play an important role in alerting the public to the threats of fraud and counterfeit PPE.

- In terms of federal government procurement of PPE supplies, more centralized procurement for federal agencies could help ensure distribution of supply is appropriately prioritized and could lessen the risks of agencies reaching out to the secondary market to fill urgent orders (e.g., rather than have agencies individually compete for scarce supplies, identify a single agency to serve as “consolidator” of orders across agencies, working to secure PPE from trusted suppliers).

\* \* \*

Chair Blumenthal, Ranking Member Blackburn, and Distinguished Members of the Subcommittee, I thank you again for the opportunity to offer these views on the subject of “Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles.” 3M is proud of our hard work to fulfill our unique and critical responsibility in pandemic preparedness and response as a leading supplier of N95 respirators and other PPE that are so important to the fight against the COVID-19 pandemic, as well as our efforts to address the reports of fraud, counterfeiting, and price gouging that have arisen in connection with these products during the pandemic. 3M very much appreciates the interest and engagement by Members of this Subcommittee and their staffs on these critical topics of PPE supply chain integrity and public health and safety. 3M remains committed to addressing this unethical and unlawful activity and to continuing to work with members of the Subcommittee, their staffs, and other stakeholders to stop and prevent it.

I will be pleased to answer any questions or to supply additional information for the record.

**Appendix A**

3M lawsuits alleging COVID-19 related fraud, counterfeiting, and price gouging.

1. *3M Co. v. Shopify Inc.*, No. cv-20-28883 (Can. Ont. Sup. Ct. Apr. 8, 2020)
2. *3M Co. v. John Doe*, No. DC-20-05549 (Dall. Cnty. 193rd Jud. Dist. Apr. 10, 2020)
3. *3M Co. v. Performance Supply, LLC*, No. 1:20-cv-02949 (S.D.N.Y. Apr. 10, 2020)
4. *3M Co. v. RX2LIVE, LLC*, No. 1:20-cv-00263 (E.D. Cal. Apr. 10, 2020)
5. *3M Co. v. Geftico, LLC*, No. 6:20-cv-00648 (M.D. Fla. Apr. 14, 2020)
6. *3M Co. v. Hulomil, LLC*, No. 3:20-cv-00394 (W.D. Wis. Apr. 28, 2020)
7. *3M Co. v. 1 Ignite Capital, LLC, et al.*, No. 4:20-cv-00225 (N.D. Fla. Apr. 30, 2020)
8. *3M Co. v. King Law Center, Chartered*, No. 6:20-cv-00760 (M.D. Fla. Apr. 30, 2020)
9. *3M Co. v. TAC2 Global LLC*, No. 8:20-cv-01003 (M.D. Fla. Apr. 30, 2020)
10. *3M Co. v. Zachary Puznak, et al.*, No. 1:20-cv-01287 (S.D. Ind. Apr. 30, 2020)
11. *3M Co. v. Zhiyu Pu, et al.*, No. cv-20-28903 (Can. Ont. Sup. Ct. May 11, 2020)
12. *3M Co. v. Burris Wolsieffer, et al.*, No. 2:20-cv-00336 (D. Utah May 29, 2020)
13. *3M Co. v. Matthew Starsiak, et al.*, No. 20-cv-01314 (D. Minn. June 5, 2020)
14. *3M Co. v. Preventative Wellness Consultants LLC*, No. 2:20-cv-02932 (S.D. Ohio June 5, 2020)
15. *3M Co. v. KM Bros. Inc., et al.*, No. 2:20-cv-05049 (C.D. Cal. Jun. 8, 2020)
16. *3M Co. v. Legacy Med. Supplies, LLC, et al.*, No. 20-cv-01371 (D. Minn. June 15, 2020)
17. *3M Co. v. Nexus Med. LLC, et al.*, No. 1:20-cv-00697 (W.D. Tex. June 30, 2020)
18. *3M Co. v. Aime LLC, et al.*, No. 2:20-cv-01096 (W.D. Wash. July 15, 2020)
19. *3M Co. v. G7 Env't LLC, et al.*, No. 20-cv-08892 (C.D. Cal. Sept. 28, 2020)
20. *3M Co. v. Am. Dental Equip. LLC*, No. 5:20-cv-02128 (C.D. Cal. Oct. 9, 2020)
21. *3M Co. v. Premium Contractor Solution, LLC*, No. 3:20-cv-00443 (S.D. Ohio Oct. 29, 2020)
22. *3M Co. v. Dreside, Navitelia Indus. Inc.*, No. 20-cv-24489 (S.D. Fla. Oct. 30, 2020)
23. *3M Co. v. Addian, Inc., et al.*, No. 20-cv-4515 (N.D. Ga. Nov. 4, 2020)
24. *3M Co. v. Cmty. Attire, Inc.*, No. 20-cv-021250 (C.D. Cal. Nov. 6, 2020)
25. *3M Co. v. Individuals, P'ships, and Unincorporated Ass'ns*, No. 20-cv-02348 (D. Minn. Nov. 17, 2020)
26. *3M Co. v. The Perfect Part Inc., et al.*, No. 20-cv-10540 (C.D. Cal. Nov. 18, 2020)
27. *3M Co. v. Paylessbeauty*, No. 20-cv-10536 (C.D. Cal. Nov. 18, 2020)

- 28. *3M Co. v. Moonlight Med. Supplies & Equip. LLC, et al.*, No. 20-cv-3664 (N.D. Tex. Dec. 17, 2020)
- 29. *3M Co. v. Nationwide Source, Inc.*, No. 20-cv-02694 (D. Minn. Dec. 30, 2020)
- 30. *3M Co. v. SLH Med. Supplies Inc., et al.*, No. 21-cv-40024 (D. Mass. Feb. 25, 2021)
- 31. *3M Co. v. CovCare Inc., et al.*, No. 21-cv-01644 (E.D.N.Y. Mar. 26, 2021)
- 32. *3M Co. v. MM Med. Supply, LLC*, No. 21-cv-00771 (M.D. Fla. Mar. 31, 2021)
- 33. *3M Co. v. Ugly Juice, LLC, et al.*, No. 3:21-cv-02338 (N.D. Cal. Mar. 31, 2021)

## **Appendix B**

Press coverage of 3M's efforts to address fraud, counterfeiting, and price gouging.

National Law Review: Respirator Mask Price Gouging and Trademark Infringement? Not on 3M's Watch <https://www.natlawreview.com/article/respirator-mask-price-gouging-and-trademark-infringement-not-3m-s-watch-0>

Law 360: Facing COVID 19 scams, companies turn to trademark law  
[https://www.law360.com/technology/articles/1321684/facing-covid-19-scams-companies-turn-to-trademark-law?nl\\_pk=d6fd733f-adac-44fb-b79e-ee82f582357c&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=technology](https://www.law360.com/technology/articles/1321684/facing-covid-19-scams-companies-turn-to-trademark-law?nl_pk=d6fd733f-adac-44fb-b79e-ee82f582357c&utm_source=newsletter&utm_medium=email&utm_campaign=technology)

Law 360: 3M Sues Amazon Seller Over Fake N95 Masks [3M Sues Amazon Seller Over Fake N95 Masks](#)

Law 360: 3M Wins Restraining Order In Price-Gouging Case:  
<https://www.law360.com/lifesciences/articles/1267281>

Bloomberg Law: 3M gets more settlements in campaign against mask price-gouging  
<https://news.bloomberglaw.com/ip-law/3m-gets-more-settlements-in-campaign-against-mask-price-gouging>

Miami Herald 'Maker of essentially N95 masks says it's targeting Florida's fraudsters and profiteers' <https://www.miamiherald.com/news/politics-government/state-politics/article242081256.html>

Wall Street Journal: 3M Sues Mask Seller for Alleged Price-gouging trademark infringement  
<https://www.wsj.com/articles/3m-sues-mask-seller-for-alleged-gouging-trademark-infringement-11586529025>

Wall Street Journal: 3M files lawsuit against merchant selling masks on Amazon for 18 times list price <https://www.wsj.com/articles/3m-files-lawsuit-against-merchant-selling-masks-on-amazon-for-18-times-list-price-11591642637>

CNN: 3M sues over another company's marked-up offer to New York City of N95 masks  
<https://www.cnn.com/2020/04/10/politics/3m-sues-new-york-city-n95-masks/index.html>

Washington Post: Used car salesman tried to scam New York out of 45 million N95s  
<https://www.washingtonpost.com/nation/2020/05/27/used-car-salesman-tried-scam-new-york-out-45-million-n95-masks-he-didnt-have-feds-say/>

New York Times: Bethany Frankel's Dark Journey to Find N95 masks  
<https://www.nytimes.com/2020/05/21/technology/bethenny-frankel-medical-masks-coronavirus.html>



New York Times: Company Questions Deal by 'Shark Tank' Star to Sell N95 Masks to Florida  
<https://www.nytimes.com/2020/04/22/us/daymond-john-n95-masks-florida-3m.html>

Good morning America: 3M Warns of counterfeit N95 masks:  
<https://www.goodmorningamerica.com/news/video/warning-counterfeit-face-masks-71837474>

Fox Business News: 3M lawsuit alleges price gouging <https://www.foxbusiness.com/money/3m-lawsuit-mask-price-gouging-ny>

Fox 3M sues KM brothers and preventative wellness over PPE fraud  
<https://www.foxbusiness.com/markets/3m-lawsuits-km-brothers-preventative-wellness>

The Hill: 3M claims distributor tried to sell masks to NYC officials  
<https://thehill.com/homenews/news/492261-3m-claims-distributor-tried-to-sell-masks-to-nyc-officials-for-six-times-price>

The Verge: 3M sues Amazon storefront that allegedly sold fake N95 masks for \$23 apiece  
<https://www.theverge.com/2020/6/9/21285364/amazon-marketplace-mask-price-gouging-n95-3m-ppe>

Pioneer Press: 3M alleges price gouging in legal action against Canadian company  
<https://www.twincities.com/2020/04/21/3m-alleges-price-gouging-in-legal-action-against-canadian-company-selling-n95-masks/>

Associated Press: 3M files 18 lawsuits against mask profiteers  
<https://apnews.com/article/f6f7ca233d85ef59cc89396b1e0779ba>

The Guardian: 45M deal for NHS masks collapses among claims  
<https://www.theguardian.com/society/2020/nov/03/45m-deal-for-nhs-masks-collapses-amid-claims>

Globe and Mail: Giant 3M launches lawsuits in Ontario against PPE fraud:  
<https://www.theglobeandmail.com/business/article-us-giant-3m-launches-lawsuits-in-ontario-several-us-states-to/>

Star Tribune: 3M gains another victory in effort to thwart N95 price gouging fraud  
<https://m.startribune.com/3m-gains-another-victory-in-efforts-to-thwart-n95-price-gouging-fraud/572182922/>

WCCO/CBS: 3M fighting to keep counterfeit N95s off the frontline  
<https://minnesota.cbslocal.com/video/5303990-3m-fighting-to-keep-counterfeit-masks-off-the-frontline/>

DHS Press Release/Story <https://www.ice.gov/news/releases/dhs-prevents-millions-counterfeit-n95-masks-reaching-hospital-workers-first>

Associated Press [US Government Seizes More than 10 million fake 3M brand N95s](#)

The Hill <https://thehill.com/policy/national-security/539322-federal-agents-seize-more-than-11-million-fake-n95-masks>

Wall Street Journal <https://www.wsj.com/articles/u-s-agents-seize-10-million-counterfeit-n95-face-masks-11613603061>

CNBC [DHS seizes 11 million counterfeit 3M N95 masks, more raids to come](#)

CBS Evening News featuring video with 3M VP and General Counsel Kevin Rhodes - <https://www.cbsnews.com/news/n95-masks-counterfeit-homeland-security/>

The Guardian <https://www.theguardian.com/world/2021/feb/17/fake-n95-masks-coronavirus-usa>

CBS: <https://minnesota.cbslocal.com/2021/02/15/not-a-problem-that-is-going-away-3m-fighting-to-keep-counterfeit-n95-masks-off-the-frontline/>

Law 360: WB Mason preyed on buyers with fake 3M masks  
<https://www.law360.com/articles/1356806/wb-mason-preyed-on-buyers-with-fake-3m-masks-suit-says>

Law 360: 3M makes deal with ex marine over massive N95 scam  
<https://www.law360.com/articles/1323511/3m-makes-deal-with-ex-marine-over-massive-n95-mask-scam>

[Wall Street Journal: 3M Sues Mask Seller for Alleged Gouging Trademark Infringement](#)

[CNN: 3M Sues In New York City Over Price Gouging of N95 Masks](#)

[CNBC: 3m Sues New Jersey Company for Alleged Price Gouging Of Masks](#)

[New York Times: 3M Sues Distributor for Alleged Price Gouging of N95 Respirators in New York](#)

[New York Daily News: Lawsuit by 3M accuses NJ business of massive price-gouging scam, peddling protective N95 masks at staggering 600% markup](#)

[Reuters: 3M Sues New Jersey Distributor Over Alleged Price Gouging of N95 Respirators in NYC](#)

[The Hill: 3M claims distributor tried to sell masks to NYC officials for six times the price](#)

[Star Tribune: 3M suit: Distributor tried to sell N95 masks to NYC for 600% above list price](#)



[FOX10 News: 3M sues over another company's marked-up offer to New York City of N95 masks](#)

[Star Tribune: 3M suit: Distributor tried to sell N95 masks to NYC for 600% above list price](#)

[Bloomberg Law: 3M Sues Unauthorized Vendor for NYC N95 Mask Price-Gouging](#)

[Daily Beast: New Jersey Company Tried to Sell New York Masks at 500% Markup](#)

[The Street: Lawsuit Charges New Jersey Company with Price Gouging N95 Masks](#)

[Channel News Asia: 3M sues distributor for alleged price gouging of N95 respirators in New York](#)

[Yahoo Finance: 3M sues Performance Supply alleging illegal price gouging of N95 face masks](#)

[MSN: 3M sues New Jersey company for alleged price gouging of masks to NYC officials](#)

[NBC New York: NJ Company Allegedly Tried to Sell Masks to NYC at 600% Markup, Suit Says](#)

[Financial Post: 3M Sues for Alleged Price Gouging in New York](#)

[FinanzNachrichten.de: 3M Sues Performance Supply Over N95 Mask Price Gouging](#)

[FOX10 News: 3M sues over another company's marked-up offer to New York City of N95 masks](#)

[Bloomberg Law: 3M Sues Unauthorized Vendor for NYC N95 Mask Price-Gouging](#)

[Florida Post: 3M sues New Jersey company for alleged price gouging of masks to NYC officials](#)